

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2672

PETITION OF RONALD L. AND MARGARET ANN RAND

OPINION OF THE BOARD

(Opinion Adopted September 13, 2006)
(Effective Date of Opinion October 27, 2006)

Case No. S-2672 is an application for a special exception, pursuant to Section 59-G-2.00 of the Zoning Ordinance, to permit an existing accessory apartment. The Hearing Examiner for Montgomery County held a public hearing on the application on July 14, 2006, and on July 28, 2006, issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 20, Cashell Woods Subdivision, located at 16733 Cashell Road, Rockville Maryland in the R-200 Zone.

Decision of the Board: Special exception **granted**, subject
to the conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on September 13, 2006. After careful consideration, and review of the record in the case, the Board adopts the Report and Recommendation, subject to the following conditions:

1. The Petitioners shall be bound by all of their testimony, representations and exhibits of record identified in the Hearing Examiner's report and in the Opinion of the Board;
2. The Petitioners shall take the following steps to comply with the items set forth in the Memorandum of Kevin Martell, Housing Field Supervisor, Division of Housing and Code Enforcement (Exhibit 17):

- a. The window in the bedroom must be enlarged to meet Code Standards for emergency egress. The window shall be at least five (5) square feet in net clear opening [and] must be openable without the use of a tool with a minimum net clear opening height of 22 inches and a minimum opening width of 20 inches, with the bottom of the opening not more than 44 inches above the floor.
- b. The two rooms without windows do not meet Code Standards for emergency egress, light and ventilation and may not be used as habitable space. They may only be used for storage.
- c. The smoke detector must be relocated to the entrance of the bedroom.
- d. The safe door must be made permanently disabled.
- e. An additional permanent heat source capable of providing a 68 degree Fahrenheit temperature must be installed in the bedroom. Portable heating equipment is prohibited.
- f. Total habitable space measures approximately 330 square feet. Based on habitability requirements, occupancy is limited to two people.

3. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;

4. Petitioners must not receive compensation for the occupancy of more than one dwelling unit;

5. Petitioners shall carefully screen applicants to be tenants in the accessory apartment, performing a criminal background check, where available, and other methods reasonably calculated to insure that prospective tenants will be respectful of the rights of others in the neighborhood.

6. Petitioners shall have any new tenants of the accessory apartment sign a lease agreement, for a minimum of one year, with clearly stated provisions prohibiting trespassing on the property of neighbors and controlling noise, pets, parking and other activities and actions that could have an adverse impact on neighboring properties;

7. Petitioners must include, in their lease agreement with any new accessory apartment tenants, a provision that restricts the tenant to parking in the off-street, gravel parking area, and restricts the use of that pad to no more than three vehicles; and

8. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy

permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Wendell M. Holloway, seconded by Angelo M. Caputo, with Donna L. Barron and Allison Ishihara Fultz, Chair in agreement, and Caryn L. Hines necessarily absent, the Board adopted the following Resolution:

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of October, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.